



State of Wisconsin • DEPARTMENT OF REVENUE

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Jim Doyle
Governor

Roger M. Ervin
Secretary of Revenue

Senate Commerce, Utilities and Rail Committee Hearing, April 18, 2007

SB 122: Waste Treatment Exemption – Exclusive Use Requirement (Sen. Hansen)

Description of Current Law and Proposed Change

Current law provides a property tax exemption for waste treatment plants and pollution abatement equipment. The exemption applies to all property purchased or constructed as a waste treatment facility used for the treatment of industrial wastes or air contaminants if certain requirements are met.

The Department historically implemented the exemption to include property used exclusively and directly in the treatment of waste that had no value.

In 2004, the Tax Appeals Court (TAC) expanded the definition of property that qualifies for the exemption in its ruling on *The Newark Group, Inc. vs. The Wisconsin Department of Revenue*. The circuit court subsequently concurred with the TAC ruling. Under the Newark decision, exempt waste treatment property may include an entire manufacturing facility if waste treatment is performed at the site. Consequently, the exemption may include all real estate, buildings, improvements, and equipment of a production process.

The bill would limit the waste treatment exemption to property used exclusively and directly for treatment of waste that has no monetary or market value. Exclusive use would be defined as 95% use for waste treatment, and would include property to produce energy for a manufacturing process if the waste would otherwise be considered superfluous, discarded or fugitive material. The bill is effective for property tax assessments as of January 1, 2007.

Fairness/Tax Equity

- By restoring the "pre-Newark" treatment of property, the bill avoids the potential exemption of significant shares of the tax bases of individual municipalities under the decision, and consequently, avoids shifts of the property tax burden to remaining taxable property.
- The bill codifies the Department of Revenue's historical practices in applying the exemption.
- By limiting the exemption to property used exclusively for waste treatment, the bill creates a parallel to the machinery and equipment exemption, which also has a 95% use provision.

Impact on Economic Development

- By limiting the waste treatment exemption to its historical application, the bill avoids tax shifts that create higher taxes on other property, which may hinder economic development.

Administrative Impact/Fiscal Effect

- Under the bill, assuming the department's recommended amendment to "used exclusively" is included (see below), the types of property that had been exempt prior to the Newark decision are expected to remain exempt. Also, the types of property that had been excluded from the exemption prior to the decision, and thus subject to property tax unless otherwise exempt, are expected to be excluded from the waste treatment exemption.

Under the Newark decision and other property assessment cases successfully challenged to date, approximately \$34 million of property is exempt from annual property taxes. The Board of Assessors denied claims for an additional \$135 million of property that may still be appealed to the circuit courts. How much of that property would be exempted is unclear at this time. The Department anticipates that additional appeals will be filed as more claims for exemption under the Newark decision are successful.

Assuming the technical amendment to "used exclusively" is made to the bill, the bill would return \$34 million of property to the tax rolls beginning with 2007 assessments. It would also avert or deny additional claims for property tax exemptions under the decision.

In addition, the bill is expected to avert reductions in state sales tax revenue that may occur as a result of the Newark decision. Under current law, a sales tax exemption exists for purchases of materials used for the construction or operation of waste treatment facilities. By reversing the Newark decision, the bill narrows the number of properties qualifying as waste treatment facilities, and thereby limits the products and materials to which the sales tax exemption may be applied.

- As a technical amendment to more closely reestablish the "pre-Newark" treatment of property, the definition of "used exclusively" in the bill should be refined. To more clearly exempt from the property tax boilers fueled exclusively by waste, the exception for "used exclusively" should apply to the production of heat or steam from fuel that is 95% or more industrial waste.
- To provide smooth transitions under the bill, the Department of Revenue recommends adding provisions:
 - a. To ensure that property tax assessments as of January 1, 2007, may be revised pursuant to this bill even if assessments for this date have already been distributed to relevant property owners.
 - b. To ensure that appeal rights apply for all revised property tax assessments made pursuant to the bill.

- c. To ensure that currently untaxed sales tax purchases are not retroactively made taxable.
- d. To avoid changing the sales tax status of property to construct or improve a waste treatment facility if a contract was entered for the construction or improvements as exempt property prior to the effective date of the bill.

DOR Position

- Support.

Prepared by: Pam Walgren, (608) 266-7817

April 17, 2007

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MEMORANDUM

April 18, 2007

To: Senate Committee on Commerce, Utilities, and Rail
From: Edward J. Wilusz, Vice President, Government Relations
Subject: **Senate Bill 122**

The following comments are submitted on behalf of the members of the Wisconsin Paper Council regarding Senate Bill 122 relating to the property tax exemption for waste treatment facilities.

The Wisconsin Paper Council is opposed to Senate Bill 122.

The Newark property tax decision has generated a substantial amount of concern among municipal officials based on the fear that the decision could ultimately lead to the removal of a substantial portion of industrial and commercial buildings from local property tax rolls. The Department of Revenue (DOR) was quick to issue an estimate that \$1.8 billion in property could become exempt from taxation. While we believe that the DOR estimate is a worst-case scenario and that individual exemption claims will need to stand on their own merits before the department, the Tax Appeals Commission, and the courts, we understand and are sympathetic with the local property tax concern.

However, we have concerns of our own. We have concerns about the ability of Wisconsin paper companies to successfully compete in the global marketplace. Developing regions, such as Brazil and China, are home to growing paper industries that can take advantage of low raw material costs, low labor costs, new technology, and/or government subsidies to, in some cases, make pulp or paper that can be shipped to this country and sold for less than we can make it here. In order for Wisconsin manufacturers to remain competitive, they must reduce costs. Unfortunately, this has led to the loss of 15,000 paper industry jobs – the highest paid manufacturing jobs in the state – since 2000.

The state has done some very positive things over the past few years to help papermakers and other manufacturers reduce costs. The sales tax exemption on fuel and electricity is a prime example. However, the economic pressure on paper companies is unrelenting and companies must continually explore ways to

reduce costs. Within this framework, it should not be surprising that companies seek to minimize tax costs – as we all do.

Our concern with the proposed legislation is not that there is a legislative response to Newark – our members quickly recognized the open-endedness of the decision and that some type of legislation would be needed to put some reasonable bounds on the exemption. Our concern with the legislation is that, in an effort to repeal the effects of Newark, SB 122 would likely go beyond Newark and threaten pre-existing exemptions.

We see the potential for SB 122 to go beyond Newark in several ways:

- The existing exemption for wood waste or "hog fuel" boilers would likely be lost.
- The existing exemption for chemical recovery boilers at pulp mills would likely be lost.
- The existing exemption for traditional waste treatment and pollution abatement property could be lost if there is a usable by-product that results from treatment.

The above issues are not related to the Newark decision and we do not believe it is the intent of the authors to affect these exemptions. In order to avoid any unintended consequences, we recommend that the bill be amended to clearly protect the exemption for these types of property. While we don't support repeal of Newark, at least this approach should come closer to a "clean" repeal.

Wood Waste Boilers

The existing exemption makes it clear that wood chips, sawdust, and other wood residue from the paper and wood products manufacturing process that can be used as fuel and that is superfluous, discarded, or fugitive are industrial wastes. This so-called "hog fuel" boiler exemption is unrelated to any aspect of the Newark decision. However, SB 122 deletes the existing exemption and attempts to replace it with an exemption from the definition of "used exclusively" relating to the production of energy for a manufacturing process. First, hog fuel boilers are used primarily to generate steam, which may not be interpreted as being "energy." Second, the wording of the bill is unclear as to whether the 95% exclusive use test applies to hog fuel boilers. If it does, they would likely not qualify. Since the hog fuel boiler exemption is unrelated to the Newark decision, it should not be changed. We would not object to moving the existing statutory language to a new definition of "industrial waste."

Chemical Recovery Boilers

Recovery boilers at some pulp mills recover chemicals that are reused in the pulping process or burned as fuel. Recovery boilers are currently exempt under the waste treatment and pollution abatement exemption. The Newark decision had nothing to do with recovery boilers.

SB 122 creates a new definition of "industrial waste" that specifies that qualifying waste can have "no use or monetary or market value." The waste chemicals that are recovered have, in our opinion, a use or value – otherwise, there would be no recovery boiler. Under the operation of SB 122, the exemption for chemical recovery boilers would likely be lost.

SB 122 should be amended to clearly state that a recovery boiler, or recovery furnace, at a pulp mill that is used to recover chemicals and generate steam is exempt.

By-Products

The existing exemption applies to property used to treat industrial wastes. By-products of the treatment process may have a use or value. For example, sludge resulting from the treatment of wastewater may be used as a soil amendment or as daily cover at a landfill. Gypsum by-products from certain air pollution control devices can be used to make wallboard. The issue of by-products from a pollution control device was not addressed in the Newark decision.

Once again, the definition of "industrial waste" in AB 122 specifies that the waste has "no use or monetary or market value." This language could be interpreted by the Department of Revenue or the courts in the future to apply to by-products. If interpreted in this way, the language in SB 122 could eliminate the exemption for traditional wastewater and air pollution control devices.

Also, if the 95% exclusive use test is applied to control devices that produce a usable by-product, DOR, or the courts, could interpret the language in SB 122 as voiding the exemption if the generation of a usable by-product exceeds 5% of total use.

The by-product issue is called further into question by the last sentence in the definition of "industrial waste," which states that the "classification of waste as industrial waste ends when the waste has a use or monetary or market value." This language seems to imply that an industrial waste stream could change as it is treated and, if it gains a use or value as a result of treatment, the exemption is lost.

The statute should clearly state that the ability to beneficially reuse by-products of the treatment process should not void the exemption. Another way to state this would be to make it clear that property that treats industrial waste may be used for multiple purposes – to treat wastes and to produce something that may be reused or has value – without losing the exemption.

Further Clarification

There appears to be general agreement that the exemption should apply to property that is necessary to comply with environmental protection requirements. This should be clearly stated in the statute in order to prevent any future confusion. For example, "all property used for the treatment of industrial waste that is necessary to comply with environmental laws, regulations, orders, or stipulations issued by the United States Environmental Protection Agency, or the Department of Natural Resources, is exempt."

Conclusion

Senate Bill 122 should be amended to:

- (1) protect the exemption for wood waste or hog fuel boilers;
- (2) clearly exempt chemical recovery boilers;
- (3) clearly state that the reuse of by-products from the treatment process does not void the exemption; and
- (4) clearly exempt waste treatment property necessary to comply with environmental requirements.

As we stated previously, we do not support the repeal of Newark. One alternative worth considering is a so-called proportional exemption. Conceptually, this approach would limit the scope of any recycling-related real property exemption to the proportion that recycling is of total facility operations. There are many details that would need to be resolved with DOR, but this approach would limit the scope of the exemption without repealing it altogether.

We urge the Legislature to explore options for compromise before moving directly to repeal. We acknowledge that this will be difficult and we are willing to participate in any discussions to find a compromise on this difficult issue.





Wisconsin Manufacturers & Commerce

Wisconsin Manufacturers'
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Wisconsin Council
of Safety • 1923
Wisconsin State Chamber
of Commerce • 1929

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TO: Senate Committee on Commerce, Utilities and Rail
FROM: Jeff Schoepke, Director, Tax & Corporate Policy
DATE: April 18, 2007
RE: Senate Bill 122 – Property Tax Exemption for Waste Treatment Facilities

Thank you for the opportunity to provide these comments on Senate Bill 122 (SB 122), relating to the property tax exemption for waste treatment facilities.

Wisconsin Manufacturers & Commerce (WMC) opposes SB 122, but wants to work with the authors to redraft the legislation to clarify the property tax exemption for waste treatment facilities under 70.11(21).

We are sympathetic to the uncertainty that the *Newark* decision has created in regards to this exemption. While we believe that the estimates of the Department of Revenue (DOR) that *Newark* will pull in excess of \$1.8 billion off of local property tax rolls is overstated, we understand that the decision creates additional confusion for local units of government as to what is and is not covered under current law.

WMC's interest in this Legislation is not limited to those companies directly affected by the *Newark* decision. We are also not actively seeking out additional processes and facilities that could take advantage of the law as understood in *Newark*.

We are, however, concerned about the impact legislative responses to the *Newark* could have on existing applications of the exemption. We believe SB 122 goes beyond the authors stated intent of returning to a pre-*Newark* understanding of 70.11(21). In other words, the bill goes beyond repealing *Newark* and threatens the exemption for companies that used it prior to the decision.

Property tax exemptions are, by their nature, complicated and subject to interpretation. In the early 1990s a committee was established to clarify the manufacturing and equipment exemption after many years of conflicting and often expansive interpretations. That committee developed a product which, while not perfect, provided clarity. We believe that a similar process responding to *Newark* could provide clarity as to how the exemption will be applied. Rushing to a legislative solution, however, will only create more uncertainty. We ask for time and patience as we work through this difficult issue.

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Our specific comments today will focus on two main areas of the bill. First, the exclusive use test, and second, the new definition of "industrial waste".

The bill creates a new exclusive use test in Section 70.11(21) (am) stating that the exemption applies to "All property . . . used exclusively and directly to remove, store, or cause a physical or chemical change in industrial waste or air contaminants. . ." It later defines "used exclusively" to include a 95% use test.

It is, at best, unclear what will qualify as "exclusively and directly". It could mean that only entities in the recycling industry, as it is commonly known, would qualify for the exemption. It could mean that hog fuel boilers, which currently receive the exemption, could be negatively affected because they have an additional purpose in the manufacturing process.

It also subjects control devices currently exempt to interpretation by assessors, DOR and the courts as to whether the 95% test is met. If the goal is to get to a pre-*Newark* world, nobody should want a fight over whether a historically exempt pollution control device controls pollution 93% or 96% of the time it is in operation. The exclusive use test appears to apply restrictions not in place prior to *Newark*.

The new definition of "Industrial waste" is perhaps the most problematic and unclear section of SB 122. The bill defines "Industrial waste" as waste "that has no use or monetary value, except as provided in subd. 3. b., and that would otherwise be considered superfluous, discarded or fugitive material." Subd. 3. b. states that the exclusive use test does not apply to property used "To produce energy for a manufacturing process, if the industrial waste would otherwise be considered superfluous, discarded, or fugitive material." It appears that industrial waste only includes property that has no value except for value in producing energy for a manufacturing process.

This would remove many existing exemptions, as most waste material is not used as energy for a manufacturing process, but rather is made into a product by going through a physical or chemical change.

It could be argued that any waste otherwise considered to be superfluous, discarded or fugitive material has value in the right hands. Many treatment by-products have beneficial reuses - and from both an environmental and business perspective, beneficial reuse should be encouraged.

Examples of processes or by-products that could be negatively affected include, but are not limited to:

- Wastewater used in other parts of the manufacturing process, including cooling or added to pulp to make paper.
- Paper sludge used as landfill cover.
- Bark and liquor used as fuel.
- Gypsum from air pollution scrubbers used to make wall board.

In summary the definition of "industrial waste" sets in play a process by which anything currently receiving the exemption can be questioned by DOR

In closing, here are some additional thoughts about potentially simple, perhaps overly simple, approaches to the issue.

- The "new" property affected by the *Newark* decision includes buildings, parking lots, and fencing at an industrial facility but not directly engaged in recycling. It may be sufficient to simply say that such property is not exempt.
- The original statute was clearly intended to exempt pollution control equipment. Perhaps the bill could state that intent clearly by exempting equipment needed to comply with state and federal environmental regulations.

Again, we share the author' interest in clarifying this tax exemption. We wish we had the solution for doing so today. We need to take time, work with tax practitioners, assessors, DOR and other interested parties to review the language and identify options. We pledge to make such a process productive.

Thank you for the opportunity to provide these comments.



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MEMORANDUM

TO: Honorable Members of the Senate Committee on Commerce, Utilities and Rail

FROM: Jayme Sellen, Legislative Associate *JS*

DATE: April 18, 2007

RE: Support for Senate Bill 122

The Wisconsin Counties Association (WCA) supports Senate Bill 122 (SB 122). SB 122 will fix a loophole in the property tax exemption for waste treatment facilities by specifically defining waste treatment facilities as used "exclusively and directly" for removing, storing or causing change in industrial waste or air contaminants.

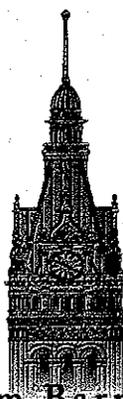
In 2004, a Tax Appeals Commission (TAC) ruling exempted \$11 million worth in value of the Newark Group's property. Newark claimed that by using recycled paper in their paperboard division they were abating pollution and should be exempt under state statute 70.11 (21)(a). The circuit court later reaffirmed the TAC ruling. This ruling led to other manufacturers claiming this property tax exemption. In 2005, two other manufacturers requested \$12.2 million worth of their property be exempt. Approximately \$150 million of taxable property could be removed from the property tax rolls in 2006. Estimates for future exemption requests add up to over \$2 billion worth of value being exempt from the property tax.

While the manufacturers are claiming and receiving these exemptions, they continue to benefit from local government services. This is at the expense of retail and residential property taxpayers. The remaining property taxpayers will be forced to pay an increased percentage of the property tax if SB 122 is not enacted.

For over fifty years it has been understood the exemption for waste treatment facilities was meant for waste treatment facilities, not manufacturers. It has only been the last couple of years in which the interpretation of the law has been expanded.

WCA respectfully request you support the passage of SB 122.

Thank you for considering my comments.



Tom Barrett
Mayor, City of Milwaukee

April 4, 2007

Senator Jeff Plale, Chair
Senate Committee on Commerce and Utilities and Rail

Dear Senator Plale and Committee Members,

Thank you for hearing Senate Bill 122 relating to the property tax exemption for waste treatment facilities. This legislation will overturn a 2004 Wisconsin Tax Appeals Commission decision that broadly interprets the application of this exemption to manufacturing property. I applaud you and the other sponsors for taking swift action to correct an unfair situation that has statewide impact.

In what is now widely known as the *Newark* decision, the Commission ruled that a business is entitled to a tax exemption under Wis. Stat. 70.11(21) as a waste treatment facility, if it uses part of its manufacturing property to recycle cardboard waste and waste paper into paperboard, even though the product is sold for a profit.

The initial court decision removed property from the tax rolls in the cities of Green Bay and Milwaukee. In May of 2006, the City of Milwaukee was informed by the Department of Revenue that it had to provide a refund of property taxes paid plus interest to the Newark Corporation. For tax years 1999-2005, the refund amounted to \$436,000. For future years, about 3.5 million dollars of property was declared exempt.

The implications of the *Newark* decision are far-reaching. The slightest reuse of scrap materials in the manufacturing process could allow the entire real estate parcel, land and improvements, to become exempt as a waste treatment facility. In fact, numerous paper mills, paperboard manufacturers and even cheese producers are now applying for the exemption. The Department of Revenue has identified that 1.8 billion dollars of taxable property could become exempt as a result of *Newark*. In the City of Milwaukee alone as much as \$67 million in property could become tax-exempt if this legislation is not passed.

The impact of this would serve to worsen a trend we have seen in recent years of residential property owners shouldering more and more of the property tax burden in this state. In 2006, residential property paid 72 percent of all property taxes as opposed to 48 percent in 1970.

Legislation is needed to close the loophole created by the *Newark* decision. We believe the Senate Bill 122 accomplishes that goal. It will protect other taxpayers, including other manufacturing properties, from another shift in property taxes throughout the state. Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in cursive script, appearing to read "Tom Barrett".

Tom Barrett
Mayor

MTB/jg



ASSESSOR'S OFFICE

Mayor Tom Barrett

Mary P. Reavey
Assessment Commissioner

Peter C. Weissenfluh
Chief Assessor

April 18, 2007

Senator Jeffrey Plale, Chair
Committee on Commerce, Utilities and Rail
Wisconsin State Legislature

RE: SB 122 relating to the property tax exemption for waste treatment facilities

Dear Senator Plale and Members of the Committee,

Thank you for scheduling this important hearing on a matter of considerable concern to Wisconsinites from all corners of the state. I come to you on behalf of the City of Milwaukee, the Wisconsin Assessors Association and a life-long Wisconsin resident.

The matter of exemptions is a serious one that deserves proper scrutiny by Wisconsin legislators as it impacts each and every state resident in some manner. Obviously the winners are the manufacturing plants – like Newark (Wisconsin Paperboard) who has been granted an exemption and currently benefits by free property services as a result of the exemption. The losers encompass all other property owners and residents in the state who are paying for the services that a property like Newark receives.

Typically decisions regarding exemptions are made based on what would constitute good public policy. The belief is that somehow an exempt institution or organization provides a service that government would provide on its own if the non-profit did not provide it. If this philosophy were correct, then it would seem that in order for an exemption for waste treatment to be granted it would be because the property exempted creates a better environment for Wisconsin residents. For instance, if the property eliminated pollution in some manner that would be otherwise emitted into the air, water, etc. there would be a benefit to the quality of life for people of this state. The reality of this exemption is that it is being granted to a for-profit business that causes pollution. Pictures of the property are included with this testimony. Within the last few years the City has received numerous service requests from neighbors for noise violations and from the Fire Department for road maintenance, fire, and sprinkler issues in addition to all of the normal property services the City provides. Clearly, this exemption passes costs, not benefits to City residents and could not be the original intent made by the legislature when it was granted.

Room 507, City Hall, 200 East Wells Street, Milwaukee, Wisconsin 53202

www.milwaukee.gov/assessor

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Member International Association of Assessing Officers and the National Tax Association

The effect of this court-expanded exemption for several Wisconsin municipalities can be seen on the attached spreadsheet that depicts taxes that would be redistributed if the current interpretation of the law were left unchanged.

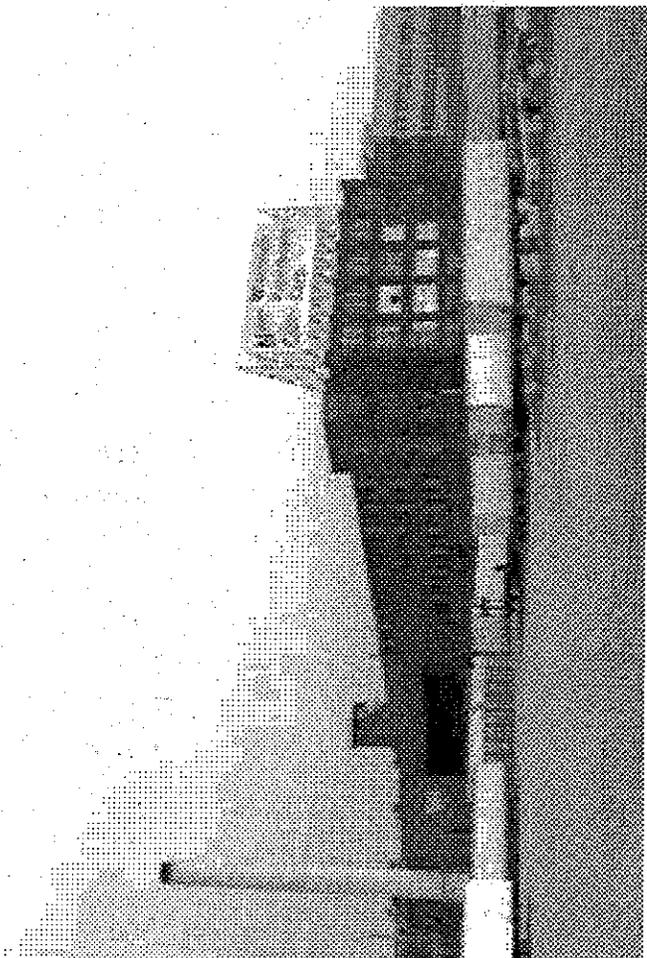
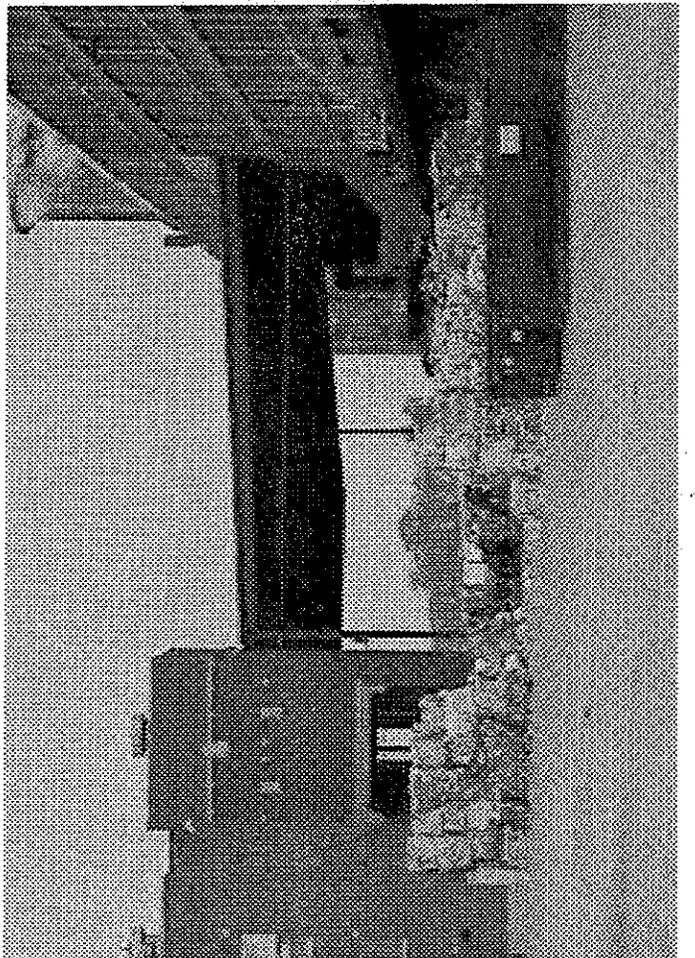
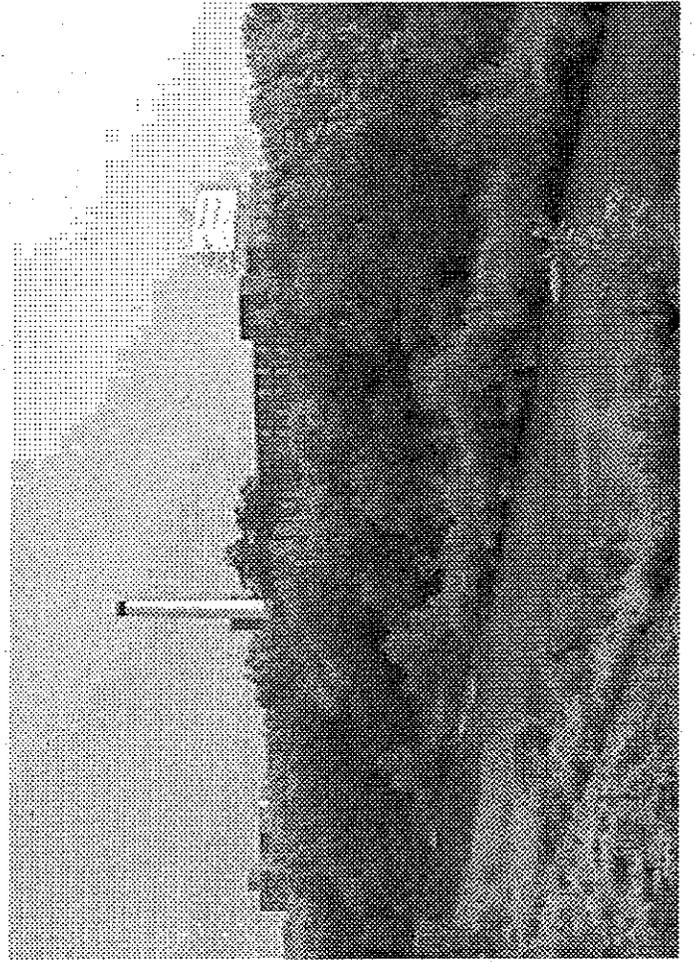
I applaud the legislature and this committee for the proposed legislation offered in SB 122. The owners of residential property have seen major increases in their burden of the property tax in the last 30 years – many of these have resulted from exemptions granted to manufacturing properties. Enactment of this bill will serve to curb that from happening again.

Please feel free to contact me for any questions. Thank you for your time and consideration in this matter.

Sincerely,

A handwritten signature in cursive script that reads "Mary Reavey".

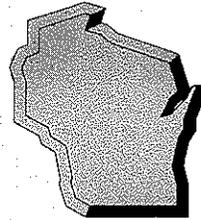
Mary Reavey
Assessment Commissioner
City of Milwaukee



Projected Impact of Newark Decision on Select Wisconsin Municipalities

Municipality	County	Lost Equalized Value*	Total Equalized Value*	% Decrease in Value	Redistributed Taxes
City of Green Bay	Brown	-\$176,621,800	\$5,594,629,100	-3.16%	\$3,885,679.60
Village of Ashwaubenon	Brown	-\$42,723,200	\$1,519,539,900	-2.81%	\$845,064.90
City of Brillion	Calumet	-\$8,506,700	\$153,888,900	-5.53%	\$202,034.13
City of Chippewa Falls	Chippewa	-\$11,465,600	\$635,481,000	-1.80%	\$239,631.04
City of Portage	Columbia	-\$17,026,200	\$508,109,400	-3.35%	\$429,911.55
Village of DeForest	Dane	-\$10,232,500	\$560,418,800	-1.83%	\$215,496.45
City of Menomonie	Dunn	-\$23,830,000	\$825,314,500	-2.89%	\$528,072.80
City of Eau Claire	Eau Claire	-\$16,218,900	\$3,374,318,800	-0.48%	\$363,952.12
City of Fond du Lac	Fond du Lac	-\$11,392,700	\$2,137,201,900	-0.53%	\$250,981.18
Village of Pleasant Prairie	Kenosha	-\$61,691,800	\$1,854,476,000	-3.33%	\$111,230.32
Town of Bradley	Lincoln	-\$13,723,300	\$350,379,700	-3.92%	\$219,984.50
City of Manitowoc	Manitowoc	-\$13,888,900	\$1,642,212,600	-0.85%	\$290,139.12
Village of Brokaw	Marathon	-\$16,617,000	\$29,044,100	-57.21%	\$457,133.67
City of Mosinee	Marathon	-\$8,911,500	\$246,844,600	-3.61%	\$189,904.07
City of Marinette	Marinette	-\$20,037,500	\$465,283,800	-4.31%	\$456,855.00
City of Franklin	Milwaukee	-\$14,989,800	\$2,566,348,500	-0.58%	\$366,650.51
City of Milwaukee	Milwaukee	-\$66,698,700	\$22,760,519,000	-0.29%	\$1,672,136.41
City of Tomah	Monroe	-\$12,750,300	\$359,945,100	-3.54%	\$332,145.32
City of Oconto Falls	Oconto	-\$7,646,600	\$121,750,600	-6.28%	\$182,447.88
City of Rhinelander	Oneida	-\$12,625,800	\$468,210,400	-2.70%	\$276,252.50
City of Appleton	Outagamie	-\$65,887,100	\$3,089,931,800	-2.13%	\$1,441,609.75
City of Kaukana	Outagamie	-\$27,222,300	\$736,965,400	-3.69%	\$60,678.51
Village of Saukville	Ozaukee	-\$24,279,300	\$322,219,700	-7.54%	\$489,227.90
Town of Oak Grove	Pierce	-\$4,481,100	\$206,092,000	-2.17%	\$76,133.89
City of Amery	Polk	-\$5,247,100	\$165,113,800	-3.18%	\$111,710.76
Village of Whiting	Portage	-\$28,009,700	\$120,524,400	-23.24%	\$447,595.01
City of Stevens Point	Portage	-\$38,946,900	\$1,211,920,630	-3.21%	\$881,368.35
Village of Sturtevant	Racine	-\$7,247,300	\$233,731,600	-3.10%	\$142,047.08
Village of Somerset	St. Croix	-\$3,455,800	\$130,457,700	-2.65%	\$74,852.63
Village of Spring Green	Sauk	-\$20,858,000	\$120,749,200	-17.27%	\$441,981.02
City of Sheboygan	Sheboygan	-\$25,068,500	\$2,179,323,300	-1.15%	\$678,604.30
Village of East Troy	Walworth	-\$7,589,000	\$251,995,900	-3.01%	\$150,262.20
Village of Germantown	Washington	-\$30,323,100	\$1,799,100,450	-1.69%	\$584,022.91
Village of Menomonee Falls	Waukesha	-\$30,451,100	\$3,342,130,200	-0.91%	\$570,044.59
City of Waupaca	Waupaca	-\$23,101,700	\$298,863,100	-7.73%	\$578,928.60
City of Menasha	Winnebago	-\$38,075,900	\$739,468,150	-5.15%	\$940,855.49
City of Neenah	Winnebago	-\$53,592,500	\$1,638,971,800	-3.27%	\$1,209,046.80
Village of Biron	Wood	-\$24,727,100	\$79,555,200	-31.08%	\$567,981.49
City of Wisconsin Rapids	Wood	-\$104,376,600	\$897,643,100	-11.63%	\$2,568,708.13

* 2004 Data



WISCONSIN CAST METALS ASSOCIATION

Oconomowoc Business Center
405 Forest Street, P.O. Box 247 ■ Oconomowoc, WI 53066
Phone 262-244-0045 ■ Fax 262-567-5323

**Comments of Brian Mitchell on Behalf of Wis. Cast Metals Assn
Re: Senate Bill 122
Senate Committee on Commerce, Utilities, and Rail
April 18, 2007**

I'm Brian Mitchell and I'm appearing on behalf of the Wisconsin Cast Metals Association, a foundry industry trade association in opposition to SB 122 in its current form.

We recognize the situation that SB 122 is intended to address however we believe the bill as drafted goes far beyond the impact of the Newark decision. The proposed language would eliminate the existing exemption for property unrelated to the current controversy over Newark.

Specifically, the problem as we see it is the new definition of "industrial waste" that is created under s.70.11(21)(ab). The new definition says that an industrial waste can have "no use or monetary or market value". This wording would effectively eliminate the exemption for property used in connection with many kinds of industrial wastes that are internally treated, recycled, and reused in a manufacturing process. All of these recovered waste systems have "use or value", otherwise the firms that use such systems would not have invested in them. An example in a foundry application is a sand reclamation system which allows sand used in the casting process to be treated and reused, substantially extending its life before the sand has to be replaced by new material.

This same definition and the qualifier than an industrial waste have "no use or monetary value" would also repeal the existing exemption for property related to industrial waste which is "beneficially reused" after leaving a manufacturing process or facility. Again, these waste streams or "byproducts" may not in all cases have "monetary or market value" but they will always have a "use", even if it is as daily cover in a landfill. An example of potentially affected property is a site or building where a byproduct such as foundry sand or slag is processed or stored before being beneficially reused.

In summary, while we are sympathetic to the concerns related to the expansion of property tax exemptions under Newark, we believe SB 122 in its current form is drastically overreaching. Unless we are rethinking the environmental, energy, and other societal benefits of treating, recycling, and reusing industrial wastes, we should stay with the current definition of "industrial waste". (Parenthetically, I'd like to add that we believe it would not be wise to add specific exceptions to the proposed new definition of "industrial waste" to address some of these examples cited today. We can't possibly anticipate all of the property that could be impacted and the ultimate decision will be in the hands of the assessor who interprets the definition.)

Thank you for considering our comments and we are available to work with the authors of the bill on any potential amendments.



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To: Senate Committee on Commerce, Utilities and Rail
From: Curt Witynski, Assistant Director, League of Wisconsin Municipalities
Date: April 18, 2007
Re: **Support for SB 122, Closing the *Newark* Property Tax Loophole for
Manufacturers**

The League of Wisconsin Municipalities strongly supports SB 122, which closes the *Newark* property tax loophole for manufacturers that use recycled material in the manufacturing process. The bill restores some much needed common sense to Wisconsin's tax policy by reversing a Wisconsin Tax Appeals Commission decision that too broadly interpreted a 50-year old property tax exemption for manufacturer's waste treatment facilities and pollution abatement equipment.

Without this legislation, municipalities are concerned that the *Newark* decision will result in a significant loss in the manufacturing property tax base and shift even more of the local property tax burden onto homeowners. Homeowners already pay in excess of 70% of the statewide property tax levy. By one estimate, *Newark* has the potential of removing over \$1.8 billion in tax base from the manufacturing assessment rolls plus more from the local assessment roll.

SB 122 reverses the *Newark* decision and we urge you to recommend passage.

Thanks for considering our comments.



LEAGUE OF WOMEN VOTERS® OF WISCONSIN

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18 April 2007

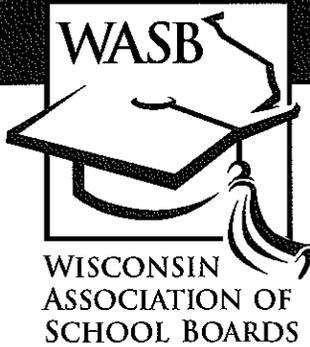
To: Senate committee on Commerce, Utilities and Rail
Re: Support SB 122 to limit some property tax exemptions

The purpose of SB 122, as we understand it, is to clarify an existing 1953 statute providing a targeted property tax exemption to reduce air and water pollution from manufacturing sources. It will continue the exemption but only for manufacturers' property used "exclusively and directly" to remove, store or cause physical or chemical change in industrial waste or air contaminants. This is intended to reverse the effects of a 2004 decision by the Tax Appeals Commission commonly referred to as the Newark decision.

The League of Women Voters supports SB 122 on these grounds:

- One, it is essential that the state maintain a solid and dependable revenue base rather than weakening it. Exemptions put the revenue base on that oft-cited slippery slope.
- Two, tax fairness among all categories of property cannot be sustained if selected groups receive special treatment through exemptions.
- Third, each exemption puts more burden on the base of the property tax -- residential property. By previously granting various property tax preferences to business and industry, Wisconsin has already significantly moved the tax burden disproportionately to homeowners.

SB 122 is an important protection for the financial health of Wisconsin's local governments and educational institutions.



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PHONE: 608-257-2622 • FAX: 608-257-8386

JOHN H. ASHLEY, EXECUTIVE DIRECTOR

TO: Members, Senate Committee on Commerce, Utilities and Rail

FROM: Dan Rossmiller, Legislative Services Director

DATE: April 18, 2007

RE: SB 122, relating to the property tax exemption for waste treatment facilities

The Wisconsin Association of School Boards (WASB) supports Senate Bill 122, as a legislative remedy to address the "*Newark* decision" and prevent both a major property tax shift onto homeowners and a major erosion of the property tax base for schools and other units of local government.

Senate Bill 122 closes a property tax exemption loophole for manufacturers that recycle material as part of the manufacturing process that was created by a court decision.

In August 2005, in what is now known as the *Newark* decision, a circuit court upheld a 2004 Wisconsin Tax Appeals Commission decision that broadly interpreted the tax exemption in state statutes for property purchased or constructed as a waste treatment facility and used for the treatment of industrial wastes. In that case, Wisconsin Paperboard, and its successor, the Newark Group, argued that it is entitled to a tax exemption as a waste treatment facility, since its uses part of its manufacturing property to recycle cardboard waste and waste paper into paperboard, even though the product is sold for profit. The decision removed property from the tax rolls in Green Bay and Milwaukee.

The potential implications of the *Newark* decision are far-reaching because the ruling states the property does not have to be used exclusively as a waste treatment facility to be statutorily exempt. Thus, the slightest reuse of scrap materials in the manufacturing process could allow the entire real estate parcel, land and improvements, to become exempt as a waste treatment facility.

According to a recent Legislative Fiscal Bureau memo, two additional manufacturers have requested the exemption for property similar to that owned by Wisconsin Paperboard and an additional 25 appeals have been filed by eight companies, including paper mills, cheesemakers, chemical plants and others.

Currently, \$146 million in appeals is pending. By one estimate, the *Newark* decision has the potential to remove over \$2 billion in tax base from the manufacturing assessment rolls plus more from the local assessment rolls, resulting in a \$40 million tax shift.

Under Senate Bill 122, only property purchased or constructed as a waste treatment facility and used "exclusively and directly" to remove, store or cause physical or chemical change in industrial waste or air contaminants would be exempt. The bill restores the original intent of the 1953 law and allows those treatment facilities that have been receiving the tax exemption properly for 50 years to continue to do so.

The WASB supports developing a well-balanced tax system that lowers Wisconsin's heavy reliance on the income and property taxes while maintaining the current two-thirds funding commitment for schools and properly funding existing mandates. Allowing this decision to stand does not foster the goal of reducing reliance on the property tax; it only shifts the burden from one group of taxpayers to another group.

Reducing our reliance of property taxes and balancing our tax system should be accomplished by thoughtful legislative consideration rather the haphazard application of court-created expansions of exemptions that distort local tax bases and create "patchwork quilt" patterns of exempt property that reflect accidents of geography more than sound policy.

Property tax exemptions that take away funding sources for local units of government and cause enormous shifts of the property tax burden onto homeowners should be granted by the legislative branch only after serious deliberation based on sound public policy considerations. We ask your support for Senate Bill 122.

CITY OF DE PERE

335 South Broadway
De Pere, WI 54115
Fax No.: 920/339-4049
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Senate Committee on Commerce, Utilities and Rail
Chairperson Jeffrey Plale

RE: Senate Bill 122

Thank you Chairperson Plale and Committee members. I am Judy Schmidt-Lehman, City Attorney for the City of De Pere, one of the communities to feel first hand, the effect of the 2004 Newark decision on tax exemption for waste treatment facilities. I am here today to tell you that the City of De Pere wholeheartedly supports legislation to reverse that decision.

In 2006, the City received word that the State Board of Assessors, following the Newark decision, granted property tax exemption for a paper wet lap manufacturing facility in De Pere. The wet lap is manufactured from recycled paper. That decision removed \$7,488,000.00 from the property tax rolls of the City, and shifted \$12.00 onto the tax bill of every other property tax payer in De Pere.

The real danger of the Newark decision however is not this one facility. The effects of that decision are very far reaching, and could result in billions of dollars in property tax value being removed from local tax rolls statewide. You have probably already heard that this decision will, if it is not already, prompt manufacturing facilities and other types of business to incorporate recycling activities into their business process in order to take advantage of the waste treatment tax exemption. This claim is not far fetched and it is not just a product of local units of government crying wolf. In the City of De Pere, it is a reality.

In De Pere, the owner of a 200,000 sq. ft. warehouse facility is actively taking steps to incorporate into their warehouse business, recycling activity. They have established a "recycling division" in one of the warehouses. They have notified the Wisconsin Department of Revenue that they are soon to acquire a shredding and baling machine which they claim will utilize 25% of the warehouse to press, compact, and bale wastepaper for sale to various recycling facilities in the area. They hope to not only exempt this equipment as manufacturing equipment, but also hope the new "recycling division" of this warehouse property will allow them to be characterized as a waste treatment facility and obtain property tax exemption on the entire warehouse operation. If successful, this will shift additional taxes to other property owners in the City. This example is just one example that the City of De Pere is aware of; what we are not aware of is maneuvering taking place by other businesses in the City to claim this exemption.

Under state law, all properties are entitled to City services, whether they pay property taxes or not. It is the City's firm belief that the waste treatment facility exemption, crafted into the statutes in the 1950's, in no way was intended to apply 50 years later so that manufacturing facilities, which make a profit on the sale of goods produced from recycled materials can receive those services for free while other property taxpayers subsidize those services.

Legislation is desperately needed in order to bring back the status quo sooner rather than later. The City of De Pere has appealed the property tax exemption decision of 2006 and in doing so has spent almost \$23,000 in legal fees to date. This however is not a City of De Pere problem; it is a statewide problem which calls out for a legislative fix rather than having the City of De Pere and other single municipalities carry the load of returning the state of the law to where it was intended to be.

Thank you for your consideration.

Judith Schmidt-Lehman
April 18, 2007

RESOLUTION #07-44

IN SUPPORT OF LEGISLATION REVERSING NEWARK DECISION

WHEREAS, on March 28, 2006, the City of De Pere received notices of determination from the State Board of Assessors that Fox River Fiber Company, LLC, with operations located within the City of De Pere, had been granted tax exemption from both real and personal property as a treatment plant and pollution abatement equipment under §70.11(21) Wis. Stats.; and

WHEREAS, such determination was the result of a Dane County Circuit Court ruling The Newark Group, Inc. v. Wisconsin Department Of Revenue, (Dane County Circuit Court Branch 17, Case no. 04-CV-1192 et. al.) (2005); and

WHEREAS, the Fox River Fiber tax exemption reduced the taxable value of land and improvements from \$7,096,800.00 to \$0; reduced the value of machinery and equipment from \$343,300 to \$0; and reduced the value of furniture and fixtures from \$27,800.00 to \$16,800.; and

WHEREAS, the net impact of this one tax exemption to a median home value in the City of De Pere is approximately a \$12.00 shift in taxes from Fox River Fiber Company, LLC to the home owner annually; and

WHEREAS, other businesses in the City of De Pere, including commercial ventures such as warehousing, have embarked upon schemes to transform small portions of their commercial and/or manufacturing facilities into treatment plant or pollution abatement equipment in order to take advantage of the exemption being granted by the Department of Revenue under §70.11(21) Wis. Stats., and

WHEREAS, the Common Council believes that the Newark ruling, wrongly interpreted Chapter 70, Wis. Stats. regarding these matters and should be reversed through legislation to prevent further unintended tax exemptions and shift of the tax burden to residential property owners: and

Resolution #07-44
Page Two

WHEREAS, the Common Council of the City of De Pere wishes to express its support for legislation to over rule the 2005 Newark decision.

NOW, THEREFORE, BE IT HEREBY RESOLVED:

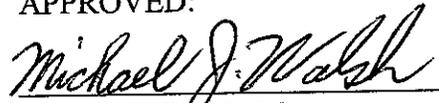
That the City of De Pere hereby expresses its support of legislation reversing the 2004 Newark Decision.

BE IT FURTHER RESOLVED:

That the City Clerk is authorized and directed to send a copy of this resolution to the City's, Senators and Representatives together with all the members of the appropriate committees of the legislature reviewing this bill.

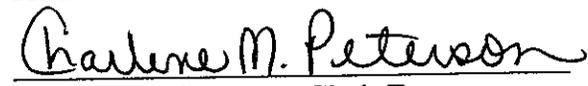
Adopted by the Common Council of the City of De Pere, Wisconsin, this 4th day of April, 2007.

APPROVED:



Michael J. Walsh, Mayor

ATTEST:



Charlene M. Peterson, Clerk-Treasurer

Ayes: 8

Nays: 0